

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court NORTHERN DISTRICT OF OHIO on the following

☒ Trademarks or ☐ Patents. (☐ the patent action involves 35 U.S.C. § 292.);

DOCKET NO. XXXXXXXXXX	DATE FILED	U.S. DISTRICT COURT NORTHERN DISTRICT OF OHIO
PLAINTIFF Saber Healthcare Group, LLC		DEFENDANT Saber Health Care, LLC et al
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,652,235		
2 3,652,238		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Geri M. Smith	(BY) DEPUTY CLERK Carlene Kinsey	DATE 3/9/2011
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

SABER HEALTHCARE GROUP, LLC
26691 Richmond Road
Bedford Heights, Ohio 44146

Plaintiff,

v.

SABER HEALTH CARE, LLC
80 Business Park Drive, Suite 104
Armonk, New York 10504

and

SABER REAL ESTATE ADVISORS, LLC
80 Business Park Drive, Suite 104
Armonk, New York 10504

and

SABER REAL ESTATE CAPITAL
PARTNERS I, LP
80 Business Park Drive, Suite 104
Armonk, New York 10504

Defendants.

CASE NO.

JUDGE:

COMPLAINT

- 1) Federal and Common Law
Trademark Infringement (False
Designation of Origin and Unfair
Competition);
- 2) Violations of the Anti-
Cybersquatting Consumer Protection
Act; and
- 3) Violations of the Ohio Deceptive
Trade Practices Act.

JURY DEMAND

Plaintiff Saber Healthcare Group, LLC, brings this action for violations of the Lanham Act (Trademark Infringement, False Designation of Origin, Dilution, and Unfair Competition) and the Ohio Consumer Sales Practices Act, against Defendants, Saber Health Care, LLC, Saber Real Estate Advisors, LLC, and Saber Real Estate Capital Partners I, LP, and states as follows:

PARTIES

1. Plaintiff Saber Healthcare Group, LLC ("Saber Healthcare"), is a limited liability company organized and existing under the laws of the State of Ohio, having its principal place of business at 26691 Richmond Road, Bedford Heights, Ohio 44146.

2. Upon information and belief, Defendants Saber Health Care, LLC, Saber Real Estate Advisors, LLC, and Saber Real Estate Capital Partners I, LP (collectively, "Saber Fund"), are Delaware corporations having their principal place of business located at 80 Business Park Drive, Suite 104, Armonk, New York 10504.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the federal trademark infringement, cybersquatting, false designation of origin, and unfair competition claims pursuant to the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1332 and 1338(a) & (b). The Court has supplemental jurisdiction over the claims arising under state law pursuant to 28 U.S.C. § 1367(a). The Court has personal jurisdiction over Defendants Saber Fund because, *inter alia*, Defendants solicit business in Ohio via the World Wide Web, *i.e.*, use of interstate commerce, and because the injury and effects of Defendants' trademark infringement and other unlawful conduct are felt in Ohio (Plaintiff Saber Healthcare's state of incorporation and principal place of business).

4. Venue is proper in this district under 28 U.S.C. §§ 1391 (b) and (c), because a substantial part of the events giving rise to the claims occurred in this District, and a substantial part of the property that is the subject of this action is situated in the District.

BACKGROUND OF THE CASE

Plaintiff's Use of SABER MARKS

5. Plaintiff Saber Healthcare is a business whose primary purpose is owning and operating assisted living facilities, nursing homes, nursing care, psychiatric services, addiction treatment services, home healthcare services, and ambulatory medical care services (collectively, "Healthcare Services").

6. Saber Healthcare has been doing business as, and using the mark, "SABER HEALTHCARE," and/or "SABER" in commerce since at least as early as June 1, 2006, to market, sell, and designate its Healthcare Services.

7. Saber Healthcare filed federal trademark application No. 77440655 on April 4, 2008, for the stylized mark "SABER" in association with various Healthcare Services; specifically, "providing assisted living facilities" (Class 43) and "nursing homes, nursing care, psychiatric services, addiction treatment services, home healthcare services, ambulatory medical care services" (Class 44). Said trademark application was approved, and issued U.S. Registration No. 3652235, on July 7, 2009 (a true and correct copy of the aforementioned trademark registration is attached as Exhibit A).

8. Saber Healthcare filed federal trademark application No. 77440681 on April 4, 2008, for the standard character mark "SABER" in association with various Healthcare Services; specifically, "providing assisted living facilities" (Class 43) and "nursing homes, nursing care, psychiatric services, addiction treatment services, home healthcare services, ambulatory medical care services" (Class 44). Said trademark application was approved, and issued U.S. Registration No. 3652238, on July 7, 2009 (a true and correct copy of the aforementioned trademark

registration is attached as Exhibit B). Federal trademark registrations 3652235 and 3652238 will collectively be referred to as the “SABER MARKS.”

9. Saber Healthcare has used the SABER MARKS since at least as early as June 1, 2006, and the marks have been continuously used therein in interstate commerce in association with the Healthcare Services offered by Plaintiff.

10. Saber Healthcare is also the owner of the uniform resource locator (url) www.saberhealth.com (“Saber Healthcare Website”), registered on May 15, 2002, which is Saber Healthcare’s Website used to market and advertise services in association with the SABER MARKS.

11. Plaintiff’s SABER MARKS are shown in association with its HealthCare Services on its website, www.saberhealth.com, a true and accurate representation of which is attached herein as Exhibit C.

12. Upon information and belief, Saber Healthcare’s use of its SABER MARKS predate Defendants’ use of “Saber Health Care,” and other trade names containing the word “SABER,” as described *infra*.

13. Upon information and belief, Saber Healthcare’s Website advertising its services in association with its SABER MARKS predates Defendants’ use of “Saber Health Care,” and trade names containing the word “SABER,” and Defendants’ registration and use of www.saberhealthcare.net (and other confusingly similar derivative domain names owned by Defendants; specifically, www.saberfund.com and any other domain name containing the word “SABER” that may be identified during discovery, which are hereby incorporated by reference).

14. Upon information and belief, Saber Healthcare's registration of its url, www.saberhealth.com, predates Defendants' registration and use of the url www.saberhealthcare.net and www.saberfund.com.

Defendants' Use of SABER MARKS

15. Upon information and belief, Defendants are also in the business of providing assisted living care facilities. Specifically, Defendants advertise on its website (www.saberhealthcare.net) that they have "extensive experience owning and operating regulated and licensed health care and real estate assets." (See Exhibit D; true and correct excerpts from one of Defendants' websites).

16. Upon information and belief, on or about November 20, 2009, Defendants or their authorized agents purchased and registered the url for www.saberhealthcare.net.

17. Upon information and belief, on or about April 24, 2008, Defendants or their authorized agents purchased and registered the url for www.saberfund.com.

18. Upon information and belief, by virtue of Plaintiff Saber Healthcare's prior use of the SABER MARKS and Saber Healthcare Website, Saber Healthcare is the senior user of the SABER MARKS.

19. Upon information and belief, Defendants' use of trade names that are confusingly similar to the SABER MARKS is occurring without the authority or permission of Plaintiff Saber Healthcare.

20. Upon information and belief, Defendants acquired and own the urls www.saberhealthcare.net and www.saberfund.com without the authority or permission of Plaintiff Saber Healthcare.

21. Upon information and belief, Plaintiff discovered Defendants' registration and use of the domain name www.saberhealthcare.net and www.saberfund.com in or about November 2010. On December 6, 2010, Plaintiff's counsel forwarded correspondence demanding that Defendants immediately terminate unauthorized use of the SABER MARKS. ("Cease and Desist Letter"; Exhibit E).

22. The undersigned counsel contacted Martin Berger, President of Defendant "Saber Health Care, LLC" via telephone on January 5, 2011, after Saber Fund failed to reply by the deadlines included in Plaintiff's Cease and Desist Letter.

23. Upon information and belief, although settlement negotiations commenced and appeared to progress towards a final resolution of the dispute, Defendants and Plaintiff have failed to reach an agreement on acceptable settlement terms.

24. Upon information and belief, www.saberhealthcare.net and www.saberfund.com are still actively advertising Defendants' confusingly similar services in association with the SABER MARKS.

FIRST CLAIM FOR RELIEF

(Infringement of a Federally Registered Trademark; 15 U.S.C. § 1114(1)(a))

25. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1-14 as if fully rewritten herein.

26. This claim is for the infringement of a trademark registered in the United States Patent and Trademark Office, pursuant to Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)(a), as amended.

27. The use by Defendants of the SABER MARKS in association with its healthcare services is an infringement of Plaintiff Saber Healthcare's SABER MARKS (federal trademark

registration numbers 3652235 and 3652238) and is likely to cause confusion, mistake, and/or deception amongst consumers as to the source of origin of Plaintiff Saber Healthcare's services.

28. Purchasers are likely to hire Defendants Saber Fund due to Defendants' use of Plaintiff's SABER MARKS believing Defendants are associated, sponsored, or affiliated with Plaintiff, thereby resulting in at least a monetary loss to Plaintiff Saber Healthcare.

29. Plaintiff has no control over the quality of the services endorsed and/or advertised by the Defendants, and because of the confusion as to the source engendered by the Defendants conduct, Plaintiff's goodwill in respect to the SABER MARKS is at the mercy of Defendants.

30. The use by Defendants of the SABER MARKS has resulted in the dilution of the exclusive rights which Plaintiff formerly enjoyed in connection with the SABER MARKS, to the detriment of Plaintiff Saber Healthcare.

31. The Defendants' infringement of the SABER MARKS have been willful and deliberate, and were designed specifically to trade upon the goodwill associated with the SABER MARKS.

32. The goodwill of Plaintiff Saber Healthcare's business under the SABER MARKS is of substantial value, and Plaintiff will suffer irreparable harm should infringement be allowed to continue to the detriment of its trade reputation and goodwill.

33. Defendants' willful and deliberate acts described above have caused injury and damages to Plaintiff Saber Healthcare, have caused injury to Plaintiff's goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Plaintiff will have no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(False Designation of Origin, Unfair Competition
Under §43(a) of the Lanham Act; 15 U.S.C. § 1125(a))

34. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 33 above as if fully rewritten herein.

35. Defendants' use of Plaintiff's SABER MARKS constitutes a false designation of origin and unfair competition which is likely to deceive customers and prospective customers into believing that the source of Defendants' services originated with Defendants, and, as a consequence, are likely to divert and have diverted customers away from Saber Healthcare.

36. Defendants' use of Plaintiff's SABER MARKS constitutes a false designation of origin and unfair competition which is likely to deceive customers and prospective customers into believing that Defendants' services are affiliated, sponsored, or approved of by Plaintiff Saber Healthcare, and, as a consequence, are likely to divert and have diverted customers away from Saber Healthcare.

37. By its unauthorized use of Plaintiff's SABER MARKS, Defendants have falsely designated the origin of its services and has competed unfairly with Plaintiff Saber Healthcare, in violation of 15 U.S.C. § 1125(a).

38. Defendants' acts described above have caused injury and damages to Plaintiff Saber Healthcare, have caused injury to Saber Healthcare's goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Saber Healthcare will have no adequate remedy at law.

THIRD CLAIM FOR RELIEF
(Violation of Anti-Cybersquatting Consumer Protection Act;
15 U.S.C. § 1125 (d)(1))

39. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 38 above as if fully rewritten herein.

40. Defendants' urls www.saberhealthcare.net and www.saberfund.com are confusingly similar to Plaintiff's SABER MARKS and url www.saberhealth.com.

41. Defendants' urls, www.saberhealthcare.net and www.saberfund.com, have been at all times relevant to this proceeding, dilutive of Plaintiff's SABER MARKS.

42. In registering and using the urls www.saberhealthcare.net and www.saberfund.com, Defendants have acted on a bad faith intent to profit from Plaintiff's SABER MARKS, including intent to divert customers from Saber Healthcare's Website to Defendants' websites for commercial gain by creating a likelihood of confusion as to the source, sponsorship, affiliation, endorsement, or origination of the services offered on the sites.

43. Defendants' aforesaid acts constitute cybersquatting in violation of 15 U.S.C. § 1125(d)(1), thereby invoking and making available to Plaintiff the remedies provided by 15 U.S.C. §§ 1116 and 1118.

FOURTH CLAIM FOR RELIEF
(Common Law Trademark Infringement)

44. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 43 above as if fully rewritten herein.

45. Plaintiff Saber Healthcare owns and enjoys rights throughout the United States and globally in and to the SABER MARKS in association with the services provided by Saber

Healthcare, and which are superior to any rights which Defendants may claim in and to said trademarks in any form or style.

46. The use by Defendants of Plaintiff's SABER MARKS is likely to cause, and in fact has caused, confusion as to the source of Defendants' goods and services in that purchasers thereof will be likely to associate or have associated such goods and services with and as originating from Defendants, all to the detriment of Saber Healthcare.

47. The continuing use by Defendants of Plaintiff's SABER MARKS is likely to cause confusion as to an association, endorsement, or affiliation of Defendants with Plaintiff Saber Healthcare.

48. Defendants' willful and deliberate acts described above have caused injury and damages to Saber Healthcare, have caused injury to Saber Healthcare' goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Saber Healthcare will have no adequate remedy at law.

FIFTH CLAIM FOR RELIEF

**(Violation of the Ohio Consumer Sales Practices Act, ORC § 1345.01 et seq.;
Deceptive Trade Practices)**

49. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 48 above as if fully rewritten herein.

50. This claim is for deceptive and unfair trade practices under state law.

51. The Defendants' conduct, described above, constitutes deceptive trade practices in violation of the Ohio Consumer Sales Practices Act, ORC §1345.01 et seq.; Deceptive Trade Practices.

52. As a result of Defendants' intentional and wrongful acts described above,

consumers have relied on, and will rely on, Defendants' deceptive and unfair practices in purchasing and evaluating Defendants' goods and services, causing irreparable injury to Plaintiff Saber Healthcare' goodwill and reputation and the reputation of the SABER MARKS in a manner that may not be adequately compensated by money damages, and unless enjoined, will cause further injury whereby Saber Healthcare shall have no adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Saber Healthcare, Group, LLC, prays for judgment as follows:

A. Judgment against Defendants for temporary, preliminary, and permanent injunctions granted pursuant to 15 U.S.C. § 1116, enjoining Defendants and their affiliates, partners, representatives, servants, employees, attorneys and all persons in active concert, privity or participation with, Defendants of and from using the trademark "SABER", and from otherwise infringing Plaintiff's trademarks; from competing unfairly with Plaintiff; from falsely designating the origin of the Defendants' services, from diluting the distinctive quality of Plaintiff's trademarks, from engaging in deceptive trade practices in violation of 15 U.S.C. § 1051 *et seq.* and the Ohio Consumer Sales Practices Act, ORC §1345.01 *et seq.*; and from engaging in unfair competition, and further specifically from:

(i) using in any manner Plaintiff's SABER MARKS, any mark or name confusingly similar to the SABER MARKS, or any other mark which so resembles Plaintiff's SABER MARKS as to be likely to cause confusion, deception or mistake, on or in connection with any goods and/or services;

(ii) passing off, inducing, or enabling others to offer services or pass off any services as being rendered by Plaintiff, which services are not in fact that of Plaintiff or associated with Plaintiff, under the control, supervision and approval of Plaintiff, or for sale under the marks owned by Plaintiff, or any other mark which so resembles Plaintiff's marks so as to be likely to cause confusion, deception or mistake;

(iii) committing any acts, including use of the SABER MARKS, calculated to cause purchasers to believe that the services offered by Defendants' are those sold under the control and supervision of Plaintiff, or are sponsored or approved or connected with Plaintiff, are guaranteed by Plaintiff, rendered under the control and supervision of Plaintiff;

(iv) further diluting and infringing Plaintiff's SABER MARKS and damaging its goodwill;

(v) selling/offering to sell any goods and/or services under the SABER MARKS, or any other distinctive design or trademark confusingly similar thereto.

B. Judgment against Defendants pursuant to the power granted the Court under 15 U.S.C. §§ 1117, 1118 that Defendants cease and desist any and all use of the SABER MARKS on its website, including on labels, signs, packages, brochures, advertising matter, receptacles, sale and purchase documents, letterhead, and other material in the possession of Defendants or under Defendants' control which bear the SABER MARKS or any other mark confusingly or substantially similar to Plaintiff's trademarks or which have been used in connection with the advertising, offering for sale, or sale of services bearing said SABER MARKS which are not Plaintiff's or made without the authorization or control of Plaintiff;

C. Ordering that Defendants be adjudged to have violated Sections 43(a) and 43(c) of the Lanham Act, 15 U.S.C. §§ 1125(a) and 1125(c), and the Ohio Consumer Sales Practices Act, ORC § 1345.01 et seq.

D. Ordering an accounting of all gains, profits, savings, and advantages realized by Defendants from their aforesaid acts of trademark infringement, cybersquatting and dilution, false designation of origin and unfair competition;

E. Awarding such damages as Plaintiff shall establish in consequence of Defendants' aforesaid acts of trademark infringement, cybersquatting and dilution, false designation of origin

and unfair competition, together with appropriate interest thereon, including three times the amount found as actual damages by the trier of fact to properly compensate Plaintiff for damages incurred as a result of Defendants' willful infringement, pursuant to 15 U.S.C. § 1117(a);

F. Ordering Defendants to send letters to clients indicating no association whatsoever to Plaintiff;

G. Ordering Defendants to deactivate all web sites and deliver up for destruction any and all services, product packaging, promotional materials, advertisements, commercials and other items in the possession, custody or control of Defendants which, if sold, displayed or used, would violate the injunction herein granted;

H. Granting Plaintiff the remedies provided by 15 U.S.C. §§ 1116 and 1118.

I. Awarding Plaintiff punitive and exemplary damages against Defendant and in favor of Plaintiff by reason of Defendants' unfair competition;

J. Awarding Plaintiff the costs of this action;

K. Declaring that this is an exceptional case, pursuant to 15 U.S.C. § 1117, and that Plaintiff be awarded its reasonable attorneys' fees;

L. Judgment against Defendants indemnifying Plaintiff from any claims brought against Plaintiff for negligence, debts, malpractice, or other breaches of any duty owed by Defendants to any person who was confused as to some association between Plaintiff and Defendants as alleged in this Complaint;

M. Judgment against Defendants for any and all claims, demands, or causes of action (now or in the future) resulting from Defendants' actions alleged in the Complaint; and

N. For such other and further relief as this Court deems just and equitable.

Respectfully Submitted,

EMERSON THOMSON BENNETT, LLC

Dated: February 1, 2011.

s/Nathan B. Webb

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DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiff, Saber Healthcare Group, LLC, hereby demands a trial by jury on all issues triable by a jury.

Dated: February 1, 2011

EMERSON, THOMSON & BENNETT

s/Nathan B. Webb